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No. 85-726

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1985

JOHN G. BARLOW ET AL.

Petitioners

v

BREWERY WORKERS LOCAL UNION NO. 1010 ET AL.

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Should this Court review the decision below which, consistent with the decisions of this Court and of the courts of appeals, properly determined that petitioners' objections to the settlement of this class action were so plainly insubstantial that further hearings and proceedings on them were not justified?

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STATEMENT OF THE CASE

Petitioners are eleven members of a class of approximately 1,100 plaintiffs. They are the only disgruntled members of the class. No other plaintiffs participated in the appeal to the court of appeals; no other plaintiffs objected in the district court to the proposed settlement.

The case began as a civil action by Brewery Workers Local Union #1010, its president, and one of its members, against Maryland National Bank, trustee of the Brewery

Workers Welfare Plan, seeking a return of money alleged to have been wrongfully distributed by the bank to a group of employers (certain brewing companies and beer distributing companies). The bank impleaded the employers and the administrative committee supervising the welfare plan. As stated by the court of appeals, "The plaintiffs' success on the merits was by no means certain."[1] After preliminary proceedings, District Judge Joseph H. Young referred the case at the request of the parties to District Judge Norman P. Ramsey for purposes of settlement.

Petitioners argue in this Court that Judge Ramsey as settlement judge acted without knowledge of the facts giving rise to the lawsuit and in ignorance of the terms of the settlement agreement. They would have this Court believe that Judge Ramsey's approval of the settlement was essentially an unprincipled or arbitrary act, so gross as to constitute a violation of the due process clause of the fifth amendment to the constitution. Nothing could be further from the truth.

Immediately upon getting the referral, Judge Ramsey asked for and received confidential position papers from all parties. Thus, even before holding the first of several formal settlement conferences, Judge Ramsey was acquainted not only with the facts of the lawsuit but with the confidential views of each of the parties as to the strengths and weaknesses of their own case and their perceptions of the strengths and weaknesses of the other parties' cases.

The first settlement conference was held on June 2, 1983. Judge Ramsey appointed Mr. Snyder as lead counsel for the purpose of trying to resolve outstanding issues. Judge Ramsey asked for and got progress reports from

[1] Petition for certiorari, page A9, fn. 4.

lead counsel in June and in August 1983 By August 31 1983 the parties had worked out a preliminary settlement agreement and general release. Another status conference was held on that date for the purpose of compromising outstanding issues and arranging for the mechanics of settlement. After encouraging further discussions and getting additional progress reports, the settlement judge held a final conference on December 1, 1983. The order preliminarily certifying this case as a class action and giving preliminary approval to the settlement agreement was signed on December 9, 1983.

Notice of the class certification and of the terms of the settlement agreement was served on the class in December 1983, and a final hearing was held on January 20, 1984 at which time the settlement judge heard petitioners' objections and made specific findings of fact on the issues before him.

To sum up: Far from being a judge out of touch with either the facts or the law of the case or the terms of the settlement agreement, as petitioners would have this Court believe, Judge Ramsey had extensive knowledge about the facts of the case and confidential appraisals from all parties about a proposed settlement of it from the very beginning. From his own efforts and those of counsel, he shepherded a difficult case to a logical and successful conclusion. As the court of appeals said: "The complexity of the litigation, with all its attendant expense and uncertainty, undoubtedly figured heavily in the decision to reach a settlement. The same considerations were also motivating the district judge."[2]

* * * * * *

[2] Petition, page A9, fn. 4.

Petitioners' constitutional argument — that denial of their request for an evidentiary hearing violated due process — was raised for the first time in the court of appeals.

In the district court, petitioners raised three, more mundane, objections [3]

First, they argued that the release in the settlement agreement was so broad as to preclude them from continuing another lawsuit against F&M Schaefer Brewing Company that they then had under way.

At the settlement hearing Schaefer's attorney *stipulated* that Schaefer would *not* attempt to use the language of the release to preclude the Barlow eleven from maintaining their other suit. Judge Ramsey accepted that stipulation and also found that the release was not overbroad. As to this objection, the court of appeals said: "We agree with the district judge that the release will not bar the objectors' separate dispute with Schaefer over rights conferred by the 1976 collective bargaining agreement."[4]

Second, the objectors quarrelled with the manner in which the settlement fund was to be distributed, claiming that only they (and perhaps other retired Schaefer Brewing Company employees) were entitled to receive the money being contributed by Schaefer to the settlement fund.

At the hearing, the objectors' counsel had not even read the terms of the Brewers Welfare Plan, which was an exhibit to the original complaint filed in 1982. The district judge held that the terms of that plan showed that it was truly a unified trust (or common pot) — not a mere collection of monies collected by individual employers. In his findings of fact, Judge Ramsey found that the terms of

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[3] These appear in their petition, pages A14-A20

[4] Petition, page A11.

the plan and the logic of a multi-employer settlement of a multi-employee class action would not allow the objectors to "sequester" or "impound" Schaefer's contribution to the settlement fund.

The court of appeals agreed with the district judge on this point also:

> The objectors also argue that the terms of the settlement particularly are unfair to them, as former Schaefer workers. The claimed unfairness stems from a term in a 1976 collective bargaining agreement, which provided that surpluses accumulated in the Welfare Plan "shall be applied for additional benefit for the employees." The provision is claimed to give the objectors the right to collect, dollar for dollar, the amount Schaefer contributed to the settlement fund. The record reflects, however, that the district judge considered the objections, determined that the Welfare Plan was a collective unified trust (not an aggregate of individual welfare plans as alleged by the objectors) and concluded that the money contributed to the settlement by Schaefer did not "belong" to the Schaefer workers. Moreover, the district judge properly reasoned that a collective dispute should be resolved through a common fund, equally distributed.[5]

Third, the objectors argued that the three class representatives could not fairly represent their interests since none of the class representatives were retired Schaefer employees. Yet, this alleged defect in the adequacy of the class representatives, like petitioners' second objection, was falsely premised on the notion that the Brewers Welfare Plan was not a collective plan and that Schaefer workers were entitled to all of Schaefer's contribution to the settlement of this case. Both courts below recognized that the welfare plan was a unified plan or common pot

[5] Petition, pages A10-A11.

and that Schaefer employees thus had no special claim to Schaefer's settlement contribution. Accordingly, there was no reason why a Schaefer employee, as opposed to any other employee, needed to be a class representative nor any reason why Schaefer employees collectively needed to be a subclass. After analyzing the plan, the district judge concluded: "I find they are not entitled to special treatment. I find they are part of the class."[6] The court of appeals held that ". . . the defects in class representation noted by the Barlow group are insufficient to disturb an otherwise fair settlement."[7]

SUMMARY OF ARGUMENT

The decisions in the courts below turn on an analysis of petitioners' particular objections to a class action settlement arising from unique facts. There are no issues of national moment needing resolution by this Court.

Moreover, the *per curiam* decision of the court of appeals was unpublished. It does not establish the law of the circuit, has no precedential value, and may not even be cited except in extraordinary circumstances.

The district judge was intimately familiar with the merits of the class action and the proposed settlement some nine months before he finally approved it. At the approval hearing, he carefully considered each of the petitioners' objections and rejected them. He denied their request for an evidentiary hearing and for additional discovery because he concluded that their objections were so insubstantial that, even if fully proved, they would not be sufficient to thwart judicial approval of the settlement of this class action.

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[6] Court of Appeals Appendix, page 177.

[7] Petition, page A9.

The district court's refusal to certify the objectors (being eleven members of an 1,100 member class) as a separate class or subclass was correct and, in any event, was a matter well within its sound discretion.

Thus, contrary to petitioners' major contention, there has been no arbitrariness, no peremptory cutting off of their rights, and thus no denial of their right to due process of law under the fifth amendment. To the contrary, their claims have been thoroughly ventilated in both courts below and have been held to be too insubstantial to justify further proceedings.

Accordingly, the petition for writ of certiorari should be denied.

REASONS FOR DENYING THE WRIT

THE DECISIONS BELOW TURN ON AN ANALYSIS OF PETITIONERS' PARTICULAR OBJECTIONS TO A CLASS ACTION SETTLEMENT AND RAISE NO IMPORTANT QUESTIONS WHICH NEED TO BE SETTLED BY THIS COURT. MOREOVER, THE DECISIONS BELOW ARE CONSISTENT WITH THE DECISIONS OF THIS COURT, THE COURTS OF APPEALS, AND THE FUNDAMENTAL PRINCIPLES OF DUE PROCESS.

From our recital of the findings of the district court and the affirmance of those findings by the court of appeals, it is clear that the petitioners' particular objections to the settlement of this class action *were* considered and decided. There has been no arbitrariness and no failure of due process. As the court of appeals put it, ". . . [W]e are satisfied that the case is simply another example of how it is impossible to please everyone."[8]

Basically, petitioners' quarrel seems not to be that their points were not carefully considered by the courts below, but rather that they were considered and decided adversely to them.

[8] Petition, pages A8-A9.

It is hard to see how any of the points raised by the petitioners — the release/estoppel issue, the issue of their entitlement to the Schaefer settlement contribution, or the issue of their entitlement to a subclass of their own — create any issues of national importance sufficient to justify this Court's time. This case turns on a special set of facts and unique objections to a particular settlement The court of appeals apparently shared this view, since its opinion was unsigned and unpublished. Under Fourth Circuit rules, the opinion does not establish the law of the circuit, has no precedential value, and cannot even be cited absent certain extraordinary circumstances.[9]

The proceedings before the district court do not offend the due process clause and none of the cases of this Court cited by petitioners (Petition at 19-20) suggest a contrary conclusion. Judge Ramsey did not err in refusing to give an evidentiary hearing to the objectors because he determined after hearing an offer of proof that their objections were so insubstantial that they would not thwart approval of the settlement, even if proved in full. Under these circumstances, an evidentiary hearing is not required. *See Mandujano v. Basic Vegetable Products, Inc.*, 541 F.2d 832, 836 (9th Cir. 1976); *Patterson v. Stovall,* 528 F.2d 108, 114 (7th Cir. 1976); *Alliance to End Repression v. City of Chicago,* 91 F.R.D. 182 (N.D. Ill. 1981). Petitioners' cases (Petition at 20-21) do not hold otherwise.

Due process is a fluid concept, and this is particularly true where a court evaluates a proposed settlement of a class action. The Fourth Circuit, in common with the other circuits, has taken the position that

> the trial court should not . . . turn the settlement hearing "into a trial or a rehearsal of a trial" nor need it "reach any dispositive conclusions on the

[9] Fourth Circuit Internal Operating Procedure 36.5.

> admittedly unsettled legal issues" in the case. . . . [I]t is entirely in order for the trial court to limit its proceedings to whatever is necessary to aid it in reaching an informed, just and reasoned decision.

Flinn v. FMC Corp., 528 F.2d 1169, 1172-1173 (4th Cir. 1975), *cert. den.* 424 U.S. 967 (1976). The Fifth Circuit has also cautioned against requiring a mini-trial:

> [I]n evaluating the terms of the compromise in relation to the likely benefits of a successful trial, the trial judge ought not try the case in the settlement hearing.

Cotton v. Hinton, 559 F.2d 1326, 1330 (5th Cir. 1977). To the same effect are Third Circuit decisions:

> Moreover, because the facts are largely undisputed, and the fairness of the settlement depends primarily upon an evaluation of the competing legal positions of the parties, it is difficult to imagine what value an evidentiary hearing would, in this case, have had. Walsh's brief on appeal does not enlighten in this respect. The district court evaluated the legal contentions of all parties and provided objectors with a full and fair opportunity to expose their positions. No more was required. *See Girsh v. Jepson*, 521 F.2d 153, 160 (3d Cir. 1975).

Walsh v. Great Atlantic & Pacific Tea Co., 726 F.2d 956 (3d Cir. 1983).

As we said in our statement of the case, Judge Ramsey began to inform himself about the merits of the case and the strengths and weaknesses of the parties, even before calling the first settlement conference. Nine months later, when the terms of the final settlement agreement were ultimately approved, he was thoroughly familiar with all of the points of contention. This was what the court of appeals had in mind when it concluded: "Given his rather

intimate view of the merits, the district judge properly approved the settlement."[10]

Similarly, the district court's refusal to certify the eleven objectors as a separate class or as a subclass is a matter within the sound discretion of the court. Interestingly, the just-published Manual For Complex Litigation, Second (1985) recommends a very cautious view of multiple classes and subclasses:

> All too often, counsel have requested certification of multiple classes and subclasses merely as a predicate for appointment to positions of leadership in conducting the litigation — and, indeed, to conceal the fact that the number of attorneys so designated was excessive. Unnecessary classes and subclasses have caused confusion, resulted in conflicts that might have been resolved amicably, and led to excessive attorneys' fees. The court should authorize multiple classes and subclasses only to the extent that the need is clearly demonstrated.

MCL 2d § 30.16

Not only was petitioners' need for a separate class or subclass not "clearly demonstrated", the reverse was clearly demonstrated. Petitioners' request for special treatment turned on the validity of its theory that the contribution of F&M Schaefer Brewing Company to the settlement fund somehow became the "property" of past and present employees of that company. Both courts below found this bewildering theory to be totally without merit. The Schaefer employees have no rights superior to the employees of other brewers and beer distributing companies. The bankruptcy of petitioners' argument is graphically demonstrated by their counsel's response to the district judge:

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[10] Petition, page A9.

> Why are they entitled to have their own subclass? The answer to that is that they are no more special than any other person, but they are the only objectors that are here.[11]

At the close of the settlement hearing of January 20, 1984 Judge Ramsey made detailed findings of fact showing why this settlement should be approved. He found: (1) that the proposed release was not overbroad and would not adversely affect petitioners' other litigation against F&M Schaefer Brewing Company; (2) that the settlement money contributed by Schaefer was not the sole property of Schaefer employees; (3) that the Brewery Workers Welfare Plan was clearly a joint plan with a unitary pot; (4) that accordingly it was not relevant that none of the class representatives were employees of Schaefer; and (5) that "this has been a thoroughly hard-working and fair-minded group who have negotiated out an arms' length settlement on behalf of the totality of the class and . . . that this has been a fair settlement which is arrived at."[12]

[11] Court of Appeals Appendix, page 155.

[12] Court of Appeals Appendix, pages 173-177.

CONCLUSION

The district court's findings were affirmed by the court of appeals. None of them raises constitutional questions of national significance that require the attention of this Honorable Court. For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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